

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GIORGIO TRANI and MARION STERNER

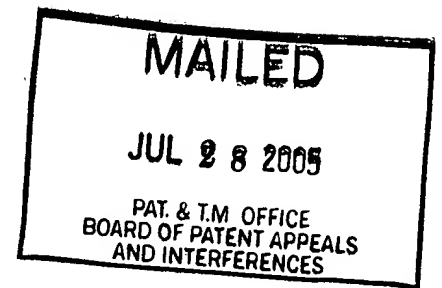
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Appeal No. 2005-0876  
Application 09/678,008

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HEARD: July 14, 2005

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Before FRANKFORT, PATE, and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 5 through 13. Claims 1 through 4, the only other claims pending in the application, have been withdrawn from further consideration.

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As noted on page 1 of the specification, appellants' invention relates to a container with an inherently stable, self-shaping base which is made of a flexible material and to a method for manufacturing it. More particularly, claims 5 through 13 on appeal are directed to the method of manufacturing the inherently stable container made of flexible material. A copy of representative independent claims 5 and 13 on appeal appears in the Appendix to appellants' brief.

The single prior art reference relied upon by the examiner in rejecting the appealed claims is:

Schneider et al. (Schneider)	1,115,636	July 29, 1965
(British Patent)		

Claims 5 through 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schneider.

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellants regarding the rejection, we make reference to the final rejection (mailed July 14, 2003) and examiner's answer (mailed December 30, 2003) for

the examiner's reasoning in support of the rejection, and to appellants' brief (filed October 16, 2003) and reply brief (filed March 3, 2004) for the arguments thereagainst.

### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by appellants and the examiner.<sup>1</sup> As a consequence of our review, we have made the determination that the examiner's rejection of claims 5 through 13 before us on appeal will not be sustained. Our reasoning in support of this determination follows.

In both the final rejection and answer, the examiner has relied upon the embodiment of the Schneider container/package shown in Figures 14 through 18 and its method of manufacture as depicted in Figures 10 through 13, 19 and 20 as being anticipatory of the method claims on appeal (See, e.g., the examiner's answer, pages 4-5). In their brief, appellants point

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<sup>1</sup>Appellants' paper filed July 11, 2005 and styled as a "Reply Brief" has not been admitted, and thus is not part of the record reviewed on appeal. See 37 CFR § 41.33(d)(1) and (2).

out that the claims on appeal set forth a process or method that forms a container or pouch that has a longitudinal center seam or heat-seal (12) and "side" flaps or wings (22, 23) that are formed, folded and sealed "laterally" relative to the longitudinal seam or heat-seal. By contrast, appellants urge that the container of Schneider relied upon by the examiner (i.e., Figs. 14-18) has "bottom" extensions or flaps (37, 37b) that are formed in the same plane as the longitudinal seam (20) of the container and subsequently folded and sealed to the bottom of the container (Figs. 19-20).

For the reasons adequately set forth by appellants' in the brief (pages 4-8), we agree that the examiner has failed to make out a *prima facie* case of anticipation, and for that reason will not sustain the rejection of claims 5 through 13 under 35 U.S.C. § 102(b).

As for the examiner's apparent shift in position and belated attempt to rely on the embodiment of the container/package (10) seen in Figure 1 of Schneider (answer, pages 5-6), we concur with appellants' assessment in the reply brief that this new position is also in error.

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Based on the foregoing, the decision of the examiner  
rejecting claims 5 through 13 under 35 U.S.C. § 102(b) as being  
anticipated by Schneider is reversed.

REVERSED

*Charles E. Frankfort*

CHARLES E. FRANKFORT )  
Administrative Patent Judge )

*William F. Pate III*

WILLIAM F. PATE III )  
Administrative Patent Judge )

*Jeffrey V. Nase*

JEFFREY V. NASE )  
Administrative Patent Judge )

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